

1 John A. Furlong, Bar No. 018356  
2 General Counsel  
3 STATE BAR OF ARIZONA  
4 4201 North 24th Street, Suite 200  
5 Phoenix, Arizona 85016-6288  
6 Telephone: (602) 252-4804  
7 John.Furlong@staff.azbar.org

8 **IN THE SUPREME COURT**  
9 **STATE OF ARIZONA**

10 PETITION TO PERMANENTLY  
11 ADOPT ARIZONA RULES OF CIVIL  
12 PROCEDURE 8(h)(3), 8(i), 16.3 and  
13 39.1

Supreme Court No. R-10-0036

**Comment of the State Bar of Arizona  
Regarding Petition to Permanently Adopt  
Rules 8(h)(3), 8(i), 16.3 and 39.1, Arizona  
Rules of Civil Procedure**

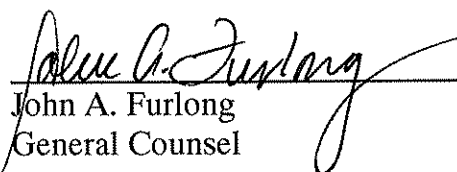
14 The State Bar of Arizona agrees with the petitioner that the four “experimental”  
15 rules for complex civil litigation (Rules 8(h)(3), 8(i), 16.3, and 39.1 of the Arizona Rules  
16 of Civil Procedure) should be permanently adopted. The feedback from judges and  
17 practitioners overwhelmingly supports the experimental rules, and, having used them  
18 for more than eight years, there is no reason to believe that they will be any less  
19 effective or less widely supported in the future. The rules provide useful tools for  
20 judges and practitioners alike in managing complex civil litigation.

21 The State Bar, however, proposes two minor modifications to the petitioner’s  
22 proposed rule amendments. First, the references to “paragraph” in the proposed  
23 amendments should be changed to “subsection,” which is the term that is generally  
24 used elsewhere in the Rules of Civil Procedure for referring to the subparts of a rule.  
25 *See* Ariz. R. Civ. P. 4(e), 4.2(m), 5(j), 7.2, 42(f)(1)(A), 54(b), 58(f) (all referring to  
26 “subsection”). *But see* Ariz. R. Civ. P. 77(f) (referring to “paragraph”).

Second, consistent with an ongoing effort to move forms out of the text of the  
rules and into Rule 84, the State Bar recommends that the “Program Certification

1 Form" referenced in Rule 8(i)(8) be moved to Rule 84 as a new Form 10. *See, e.g.,*  
2 Ariz. R. Civ. P. 45(a)(1)(D) (2011 amendment moving the form of subpoena to  
3 Rule 84). Attached as Appendix A is a revised version of the affected sections of the  
4 petitioner's proposed rule amendments that identifies where the recommended changes  
5 would be made.

6 RESPECTFULLY SUBMITTED THIS 3<sup>rd</sup> day of May, 2011.

7  
8   
9 John A. Furlong  
General Counsel

10 Electronically filed with the Clerk  
11 of the Supreme Court of Arizona  
12 this 3<sup>rd</sup> day of May, 2011,

13 By: Kathleen A. Lundgren

14 A copy was mailed to:  
15 David K. Byers, Director  
16 Administrative Office of the Courts  
17 1501 West Washington Street  
Phoenix, Arizona 85007

18 this 3<sup>rd</sup> day of May, 2011

19  
20 By: Kathleen A. Lundgren  
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22  
23  
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25  
26

# **Appendix A**

1                    ***State Bar's Suggested Modifications to Petitioner's Proposed Amendments***

- 2
- 3                    • Petitioner's proposed additions shown by underscoring (e.g., stored) and
- 4                    deletions shown by strike-through (e.g., ~~stored~~)
- 5                    • The State Bar's proposed additions are shown in bolded italic (e.g.,
- 6                    ***stored***) and deletions are shown by bolded strike-through of either the
- 7                    current text of the rule or petitioner's underscored additions (e.g., ~~***stored***~~
- 8                    or ~~***stored***~~)

9                    **Rule 8(h). Civil Cover Sheets; Classification of Civil Actions**

10                    \*           \*           \*           \*

11                    (3) In those counties in which a complex civil litigation program has been

12                    established, in addition to the the Civil Cover Sheet designation required by

13                    **paragraph subsection** (1), the caption shall also identify the action as complex if the

14                    action meets the criteria listed in Rule 8(i).

15                    **Rule 8(i). Complex Civil Litigation Program Designation**

16                    \*           \*           \*           \*

17                    (2) **Factors.** In deciding whether a civil action is a complex case under ~~subdivision~~

18                    **paragraph subsection** (1), the court shall consider the following factors . . . .

19                    \*           \*           \*           \*

20                    (5) **Designation by defendant or joint designation.** A defendant may designate an

21                    action as a complex case if the plaintiff has not done so and if the court has not already

22                    made a ruling in this matter by filing a motion and the certification of complex case

23                    described in **paragraph subsection** (3) at or before the time of filing defendant's first

24                    responsive pleading and serving them upon the plaintiff. The parties may join in

25                    designating an action as a complex case by filing a joint motion and certification of

26                    complex case with or before the filing of defendant's first responsive pleading.

\*           \*           \*           \*

(8) **Program Designation Certification Form.** The certification of a complex case shall be substantially in the following form *set forth in Rule 84, Form 10.*

**IN THE SUPERIOR COURT OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

_____	)	Case No. _____
<b>Plaintiff</b>	)	
	)	<input type="checkbox"/> <b>Certification of Complexity</b>
<b>vs.</b>	)	<input type="checkbox"/> <b>Joint Certification of Complexity</b>
	)	<input type="checkbox"/> <b>Contravening</b>
<b>Certification</b>	)	
_____	)	
<b>Defendant</b>	)	
_____	)	

☐ **The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:**

☐ **Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve**

☐ **Management of a large number of witnesses or a substantial amount of documentary evidence**

☐ **Management of a large number of separately represented parties**

☐ **Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court:**

\_\_\_\_\_  
☐ **Substantial postjudgment judicial supervision**

☐ **The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law**

☐ **Inherently complex legal issues**

☐ **Factors justifying the expeditious resolution of an otherwise complex dispute**

☐ **The following other factor(s) warranting designation as a complex case, in the interest of justice:**

\_\_\_\_\_  
☐ **The (undersigned certifies) (parties certify) that this action is not a complex case for the following reasons:**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200

1 ~~(Attorney for) (Plaintiff) (Defendant)~~

2 \_\_\_\_\_  
3 ~~(Attorney for) (Plaintiff) (Defendant)~~

4 ~~[This certification must be accompanied by a motion]~~

5  
6  
7 **Rule 84. Forms**

8 \* \* \* \*

9 ***Form 10. Certification of a Complex Case<sup>1</sup>***

10  
11 **IN THE SUPERIOR COURT OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13  
14 \_\_\_\_\_, } Case No. \_\_\_\_\_  
15 Plaintiff }  
16 vs. } ☐ Certification of Complexity  
17 } ☐ Joint Certification of Complexity  
18 \_\_\_\_\_, } ☐ Contravening Certification  
19 Defendant }

20 ☐ The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:

21 ☐ Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve

22 ☐ Management of a large number of witnesses or a substantial amount of documentary evidence

23 ☐ Management of a large number of separately represented parties

24  
25 \_\_\_\_\_  
26 <sup>1</sup> The form is the same as the form currently in Ariz. R. Civ. P. 8(i)(8). It is not shown in ***italic bold*** here to avoid the suggestion that the form should be displayed in that format, but the intent is to move the form from Rule 8(i)(8) to Rule 84.

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☐ Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court:

\_\_\_\_\_

- ☐ Substantial postjudgment judicial supervision
- ☐ The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law
- ☐ Inherently complex legal issues
- ☐ Factors justifying the expeditious resolution of an otherwise complex dispute
- ☐ The following other factor(s) warranting designation as a complex case, in the interest of justice:

\_\_\_\_\_  
\_\_\_\_\_

☐ The (undersigned certifies) (parties certify) that this action is not a complex case for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this        day of \_\_\_\_\_, 200

\_\_\_\_\_  
(Attorney for) (Plaintiff) (Defendant)

\_\_\_\_\_  
(Attorney for) (Plaintiff) (Defendant)

[This certification must be accompanied by a motion]